

RESOLUTION NO. 2008-XX

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY MAKING FINDINGS AND DETERMINATIONS AND APPROVING THE INCORPORATION OF THE TOWN OF SAN MARTIN WITH TERMS AND CONDITIONS

WHEREAS, on February 7, 2007, a registered voter petition and application for the incorporation of the Town of San Martin was filed with LAFCO pursuant to Title 6, Division 1, commencing with Section 56000 et seq. of the Government Code; and

WHEREAS, the stated purpose for the incorporation, as set forth in the petition, is to gain local control of land use, growth, planning policy and other governmental activities; to create a locally accountable governing body that is more visible, accessible, and responsive to the vision of local residents for the destiny of their rural community, and to legally recognize that San Martin already has the critical attributes of a town in that it has a name, a distinct geographic area, a variety of land uses and a positive relationship with bordering cities; and

WHEREAS, the Executive Officer submitted the petition to the County Registrar of Voters for verification that sufficient registered voters within the incorporation area signed the petition, and the County Registrar of Voters found that the requisite number of valid signatures were affixed to the petition, as required by law; and

WHEREAS, a Certificate of Sufficiency was issued on March 6, 2007; and

WHEREAS, a Certificate of Filing for the proposal was issued on June 26, 2008 by the Executive Officer of the Local Agency Formation Commission of Santa Clara County, pursuant to Title 6, Division 1, commencing with Section 56000 et seq. of the Government Code; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56665, has reviewed the proposal and prepared a report including recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56664, set November 7, 2008 as the hearing date for consideration of this proposal; and

WHEREAS, a duly noticed informational public meeting was held at the Morgan Hill Community Center on November 3, 2008; and

WHEREAS, this Commission, on November 7, 2008, considered the proposed incorporation and the report of the Executive Officer, and considered the factors determined by the Commission to be relevant to this incorporation, including, but not limited to, the factors specified in Government Code section 56668; and

WHEREAS, this Commission called for and held a public hearing on the proposed incorporation on November 7, 2008, and at the hearing, this Commission heard and received all oral and written protests, objections and evidence which were made, presented or filed, and all

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persons present were given an opportunity to hear and be heard with respect to the proposed incorporation and the report of the Executive Officer; and

WHEREAS, pursuant to the California Environmental Quality Act, the Commission certifies that it has reviewed and considered the information in the Negative Declaration for the Proposed Incorporation of the Town of San Martin, having concluded at its meeting on June 4, 2008 that potential inconsistencies with LAFCO and local policies did not related to reasonably foreseeable physical impacts on the environmental; and

WHEREAS, pursuant to Government Code Section 56375, the Commission has determined that approval of the proposed incorporation, as presented to the Commission at its November 7, 2008 hearing, is in the public welfare and the best interests of the residents of the affected area.

NOW, THEREFORE, the Local Agency Formation Commission of Santa Clara County, based on the entire record, including the finding, discussions and conclusions set forth in the Executive Officer's Report, which is incorporated herein by this reference, DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

SECTION 1:

The Commission finds based on the entire record, that:

- a. The proposed incorporation is consistent with the intent of the Cortese-Knox-Hertzberg Local Government Reorganization Act ("Act") of 2000, including, but not limited to, the policies of Sections 56001, 56300, 56301, and 56377 of the Act.
- b. The Commission has reviewed the spheres of influence of the affected local agencies and is consistent with those spheres of influence upon amendment of the City of Morgan Hill sphere of influence to exclude a portion of the proposed incorporation area.
- c. The Commission has reviewed the Comprehensive Fiscal Analysis prepared pursuant to Section 56800.
- d. The Commission has reviewed the Executive Officer's Report and recommendations prepared pursuant to Section 56665, and the testimony presented at its public hearing.
- e. The proposed Town is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

SECTION 2:

The Commission orders the proposed incorporation subject to confirmation by a majority of registered voters and passage by a majority of voters of a Utility Users Tax (UUT) of 10.7% on natural gas and electricity in the first six years of the incorporation and a 6.9% UUT on

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natural gas and electricity from Year 7 through Year 25 following the incorporation. The UUT will raise revenue for general governmental purposes of the Town and these revenues shall be placed in the Town's general fund and used for Town expenses.

SECTION 3:

The Commission approves the proposed incorporation of the Town of San Martin with the boundaries as depicted in Exhibit A attached hereto and incorporated herein subject to:

a. the Town of San Martin levying and collecting a UUT of 10.7% on natural gas and electricity in the first six years of the incorporation and a UUT of 6.9% on natural gas and electricity from Year 7 through Year 25 following incorporation, as approved by the voters, by adopting the ordinance attached hereto as Exhibit B, which is incorporated herein by this reference.

b. specific terms and conditions as described in more detail in Exhibit C attached hereto and incorporated herein.

SECTION 4:

The Commission, as lead agency, hereby adopts the Revised Initial Study/ Negative Declaration (March 11, 2008) prepared for the proposed incorporation of the Town of San Martin and related sphere of influence amendments based on the findings that the Negative Declaration was prepared in accordance with law and reflects the LAFCO of Santa Clara County's independent judgment and analysis; that LAFCO has considered the Negative Declaration and all comments received during the comment period; and that there is no substantial evidence in the record that the Project will have a significant effect on the environment and designates LAFCO Executive Officer as the location and custodian of the documents and other materials that constitute the record of proceedings on which this decision is based.

SECTION 5:

The Commission hereby approves concurrent detachment from the County Library Services Area and waives detachment from the County Lighting Services Area.

SECTION 6:

The Commission hereby amends the City of Morgan Hill's sphere of influence to exclude Area 2 as depicted in Exhibit D attached hereto and incorporated herein by reference and adopts the related Statement of Determinations.

SECTION 7:

The Commission hereby approves a coterminous sphere of influence for the Town of San Martin and adopts the related Statement of Determinations.

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SECTION 8:

The Commission hereby approves a coterminous Urban Service Area for the Town of San Martin.

SECTION 9:

The Commission hereby requests the Board of Supervisors to call an election on the subject reorganization and the Utility Users Tax, subject to the attached findings, determinations, terms and conditions, the proposed ballot wording shall be substantially in the following form: Shall the Order adopted on November ____, 2008, by the Local Agency Formation Commission of Santa Clara County ordering the incorporation of the territory described in the Order and designated in the order as the "Proposed Incorporation of the Town of San Martin" be confirmed subject to the terms and conditions specified in the Order, including a Utility Users Tax as described in the Order?

Shall the San Martin Town Council levy and collect a Utility Users Tax on electricity and gas of 10.7% in the first six years of the incorporation and of 6.9% from Year 7 through Year 25 to fund general services as described in the Order?

PASSED AND ADOPTED by the Local Agency Formation Commission of Santa Clara County, State of California, on _____, by the following vote:

AYES:

NOES:

ABSENT:

Pete Constant, Chairperson
LAFCO of Santa Clara County

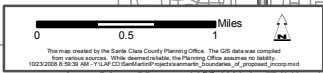
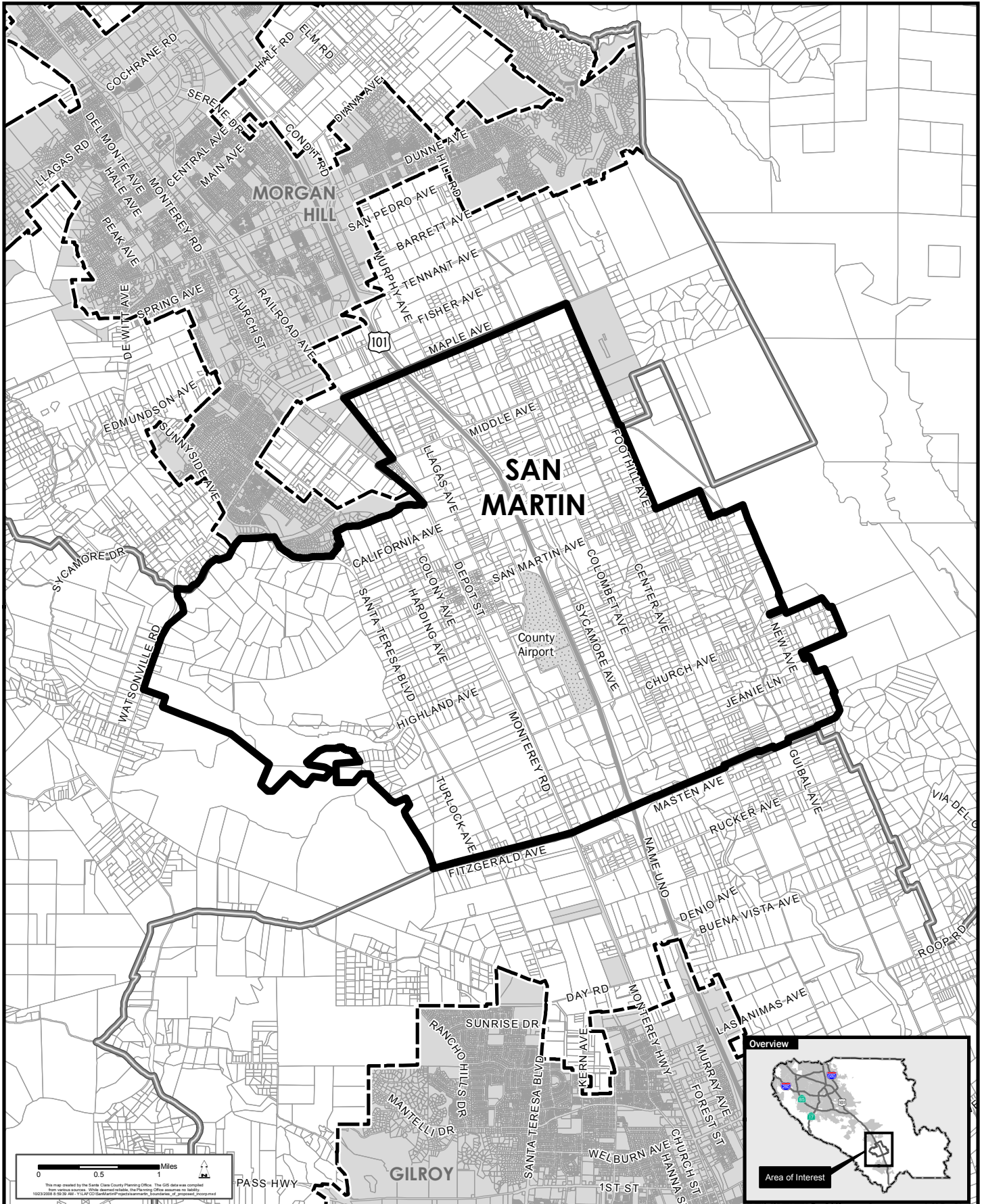
ATTEST:

APPROVED AS TO FORM AND LEGALITY:

Emmanuel Abello, LAFCO Clerk

Mala Subramanian, LAFCO Counsel

EXHIBIT A: San Martin Incorporation Boundary



- Recommended Boundary for Town Limits, Urban Service Area, and Sphere of Influence
- Other Cities' Spheres of Influence
- Other Cities' Urban Service Areas



TOWN OF SAN MARTIN MUNICIPAL CODE

Chapter _____ UTILITY USERS TAX

Sections:

- ____.010 Purpose.
- ____.020 Definitions.
- ____.030 [Reserved].
- ____.040 Electricity users tax.
- ____.050 Gas users tax.
- ____.060 Collection of Tax From Service Users Receiving Direct Purchase of Gas or Electricity.
- ____.070 Constitutional and Statutory Exemptions.
- ____.080 Substantial Nexus/Minimum Contacts.
- ____.090 Duty to collect--Procedures.
- ____.100 Filing Return and Payment.
- ____.110 Collection of Penalties.
- ____.120 Deficiency Determination and Assessment – Tax Application Errors.
- ____.130 Administrative Remedy – Non-Paying Services Users.
- ____.140 Actions to Collect.
- ____.150 Additional Powers and Duties of Tax Administrator.
- ____.160 Records.
- ____.170 Refunds.
- ____.180 Appeals.
- ____.190 No Injunction/Writ of Mandate.
- ____.200 Remedies Cumulative.
- ____.210 Notice of Changes to Ordinance.
- ____.220 Penalties.
- ____.230 Future Amendment to Cited Statute.
- ____.240 Independent Audit of Tax Collection, Exemption, Remittance and Expenditure
- ____.250 Operative Date.

____.010 Purpose. This chapter is enacted solely to raise revenue for the general governmental purposes of the Town. All of the proceeds from the tax imposed by this chapter shall be placed in the Town's general fund and used for the usual current expenses of the Town.

____.020 Definitions. The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. “Billing Address” shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

B. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section 216.6 of the California Public Utilities Code) for producing power for the

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generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

C. "Electrical corporation" and "gas corporation" shall have the same meanings as defined in Sections 218 and 222 of the California Public Utilities Code except, "electrical corporation" and "gas corporation" shall also be construed to include any municipality, public agency, broker/marketer, person or franchised agency engaged in the selling or supplying of electrical power or gas to a service user.

D. "Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C.S. 79z 5a) and regulations thereunder.

E. "Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

F. "Month" means a calendar month.

G. "Non-utility Supplier" shall mean:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the Town, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owned utility, cogenerator, municipal utility district, federal power marketing authority, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the Town, which sells or supplies electricity or supplemental services to electricity users within the Town; and

(3) a gas service supplier, aggregator, marketer, or broker, other than a supplier of gas distribution services to all or a significant portion of the Town, which sells or supplies gas to users within the Town.

H. "Person" shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the Town) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

I. "Service Supplier" shall mean any entity or person, including the Town, that provides electric or gas service to a user of such services within the Town, and includes an entity or person required to collect, or self-collect under Section _____.060 of this Chapter, and remit a tax as imposed by this Chapter, including its billing agent in the case of electric or gas service suppliers.

J. "Service User" shall mean a person required to pay a tax imposed under the provisions of this Chapter.

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K. "State" shall mean the State of California.

L. "Tax Administrator" means the finance director of the Town or his or her designee.

M. "Town" means the Town of San Martin.

N. "Town Manager" means the Town Manager of Town, or his or her authorized representative.

____.030 [Reserved]

____.040 Electricity users tax.

A. There is hereby imposed a tax upon every person using electricity for the person's residence in the Town. The tax imposed by this section shall be at the rate of 10.7% for the first six years of the incorporation and 6.9% for Year 7 through Year 25 of the incorporation, of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a service supplier or non-utility supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

B. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) energy charges;
- (2) distribution and transmission charges;
- (3) metering charges;
- (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;
- (5) customer charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fee, franchise surcharge, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and
- (6) charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission, or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

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D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential customers in the Town, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him or her for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the Town for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

F. The tax on electricity provided by self-production or by a non-utility supplier or an electric utility not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section _____.060. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the twentieth (20th) day of the following month or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of the tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

_____.050 Gas users tax.

A. There is hereby imposed a tax upon every person using gas in the person's residence in the Town, which is transported through a pipeline distribution system. The tax imposed by this section shall be at the rate of 10.7% for the first six years of the incorporation and 6.9% for Year 7 through Year 25 of the incorporation, of the charges made for such gas, including all services related to the storage, transportation, and delivery of such gas.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering,

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trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, service establishment or reestablishment charges, administrative charges, marketing charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

(5) charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential customers in the Town, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of gas service; or, ii) currently, or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. The following shall be excluded from the base on which the tax imposed in this section is computed:

(1) Charges made for natural gas which is to be resold and delivered through mains and pipes;

(2) Charges made for natural gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

(3) Charges made by a gas utility for gas used and consumed in the conduct of business of gas public utilities;

(4) Charges made for gas used in the propulsion of motor vehicles, as that phrase is defined in the vehicle code of the state, utilizing natural gas; and,

(5) Charges made for gas used by a nonutility supplier to generate electrical energy for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with Section _____.060 of this chapter.

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F. The tax on gas provided by self-production or by a non-utility supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section _____.060. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

_____.060 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

A. Any service user subject to the tax imposed by Sections _____.040 or _____.050, hereof, which produces gas or electricity for self-use, or which receives gas or electricity directly from a non-utility supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of gas or electricity in the Town that is directly billed and collected by the service supplier or its billing agent, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the Town, is excessive, the Town may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used had been provided by the service supplier which is the primary supplier of gas or electricity.

_____.070 Constitutional and Statutory Exemptions.

A. The taxes imposed by this Chapter shall not apply to:

- (1) Any person or service user if imposition of such tax upon that person or service user would be in violation of a federal or state statute or the Constitution of the United States or the Constitution of the State of California, or otherwise exempted by this Chapter; and
- (2) The Town.

B. This ordinance shall require the Town to levy and collect a utility users tax at the rate of 10.7% for the first six years of the incorporation and 6.9% for Year 7 through Year 25 of the incorporation, of the charges made for any gas or electric services used by any service user

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within the Town, except where any such service user or utility service is made expressly exempt from utility users tax by this chapter.

C. Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (A) of this section _____.070, shall file an application with the Tax Administrator for said exemption or suspension; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption or suspension, and shall include the names of all utility service suppliers serving that service user. If deemed subject to an exemption or suspension by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt or suspended status. A service user that fails to comply with this section shall not be entitled to a refund of utility users taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. Upon request of the Tax Administrator, a service supplier or non-utility supplier, or their billing agents, shall provide a list of names and addresses of those customers which, according to their billing records, are deemed exempt or suspended from the payment of utility users tax.

D. The decision of the Tax Administrator may be appealed pursuant to Section _____.180 of this Chapter. Filing an application with the Tax Administrator and appeal to the Town Manager pursuant to Section _____.180 of this Chapter is a prerequisite to a suit thereon.

E. Following application and approval of any exemption or suspension from the payment of all or any part of the utility users tax by the Town, the Tax Administrator shall prepare a list of the persons exempted or suspended from the payment of such tax by virtue of this section and shall furnish a copy thereof to each service supplier.

F. Any service user who has been exempted or suspended from the collection of utility users tax pursuant to this section shall notify the Tax Administrator within ten (10) calendar days following a change in facts or circumstances which may disqualify said service user from receiving such exemption or suspension. It shall be a misdemeanor for any person to knowingly receive the benefits of an exemption or suspension provided by this section when the basis for such exemption or suspension does not exist or ceases to exist.

_____.080 Substantial Nexus / Minimum Contacts.

A. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. A service supplier shall be deemed to have sufficient activity in the Town for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the Town, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the Town by employees, independent contractors, resellers, agents or other representatives; solicits business in the Town on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the Town or distributed from a location with the Town; or

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advertises in newspapers or other periodicals printed and published within the Town or through materials distributed in the Town by means other than the United States mail.

B. The Town shall make available, upon request, an accurate description of its jurisdictional boundaries based on street addresses and/or ZIP Plus Four, in an electronic format. If a service supplier relies upon such information provided by Town, it shall not be responsible for any errors in taxation that may result.

____.090 Duty to collect--Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the time and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user may be applied to the utility service charge first until such charge has been fully satisfied. Any remaining balance shall be applied to the taxes due, except in those cases where a service user pays the full amount of the charges but notifies the service supplier of his or her refusal to pay the tax imposed on the charges.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing.

____.100 Filing Return and Payment.

Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he/she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information exempt from disclosure provisions of the Public Records Act.

____.110 Collection Penalties.

A. Taxes collected from a service user, or self-collected by a service user subject to Section _____.060 of this Chapter, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on or before the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the Town's account on or before the following business day.

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B. If a service supplier, or a service user subject to Section _____.060 of this Chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate as set forth by resolution of the Town Council of the total tax that is delinquent in the remittance, and shall pay interest at the rate as set forth by resolution of the Town Council, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate as set forth by resolution of the Town Council of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

_____.120 Deficiency Determination and Assessment – Tax Application Errors.

A. The Tax Administrator shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this Chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.

B. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate as set forth by resolution of the Town Council, on the amount of the tax from the date on which the tax should have been received by the Town. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the Town.

C. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of

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the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section _____.180 of this Chapter. Filing an application with the Tax Administrator and appeal to the Town Manager pursuant to Section _____.180 of this Chapter is a prerequisite to a suit thereon.

E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be at the rate as set forth by resolution of the Town Council on the total amount of the assessment, along with interest at the rate as set forth by resolution of the Town Council, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the Town seeking payment of a tax assessed under this Section _____.120 shall commence from the date of delinquency as provided in this subsection E.

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

_____.130 Administrative Remedy - Non-Paying Service Users.

A. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the Town, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the Town with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter.

B. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate as set forth by resolution of the Town Council of the total tax that is owed, and shall pay interest at the rate as set forth by resolution of the Town Council, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

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_____.140 Actions to collect.

Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the Town. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the Town by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the Town under the provisions of this Chapter shall be liable to an action brought in the name of the Town for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the Town as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees and court costs.

_____.150 Additional Powers and Duties of Tax Administrator.

A. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

B. The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office.

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: (a) conform to the billing procedures of a particular service supplier (or service user subject to Section _____.060 of this Chapter) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, (b) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the Town at any time.

D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section _____.120 of this Chapter for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent

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payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, prorated for any portion thereof.

F. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption or suspension from, or a refund of, the tax imposed by this Chapter.

G. The Tax Administrator or the Town Manager, with the written approval of the Town Attorney, may compromise a claim pursuant to this Chapter where the portion of the claim proposed to be released is less than the amount set by ordinance or resolution of the Town Council relating to the settlement of general liability claims against the Town and, with the approval of the Town Attorney and the Town Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by ordinance or resolution of the Town Council relating to the settlement of general liability claims against the Town by the Town Manager.

H. Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

_____.160 Records.

A. It shall be the duty of every person required to collect and/or remit to the Town any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at a reasonable time.

B. The Town may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the Town on or before the due date, provided that such person shall reimburse the Town for all reasonable travel expenses incurred by the Town to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the Town to conduct the inspection.

C. The Tax Administrator, or the Tax Administrator's designated representative, is authorized to execute a non-disclosure agreement approved by the Town Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator, or the Tax Administrator's designated representative, may request from a person providing transportation services of gas or electricity to service users within the Town a list of the names and addresses, and other pertinent

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information, of its transportation customers within the Town pursuant to Section 6354(e) of the California Public Utilities Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the Town; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the Town.

E. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars (\$500) on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

_____.170 Refunds. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, it may be refunded as provided in this section:

A. The Tax Administrator or Town Manager may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the Tax Collector. The period for filing a claim for refund shall be one year from the time the tax was paid or erroneously or illegally collected; provided however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Title 1, Division 3.6, Part 3, Section 911.2 of the California Government Code. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has right to a refund. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by ordinance or resolution of the Town Council relating to the settlement of general liability claims against the Town by the Tax Administrator or Town Manager, Town Council approval shall be required.

B. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the Town pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.

C. Notwithstanding the notice provisions of subsection (A) of this section _____.170, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges

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subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

D. Notwithstanding the notice provisions of subsection (A) of this section _____.170, in the event that a service supplier, or a person required to self-impose a tax imposed by this Chapter, remits a tax to the Town in excess of the amount of tax imposed by this Chapter, said service supplier, or a person required to self-impose a tax imposed by this Chapter, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax, and provided that the Finance Director shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim.

_____.180 Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section _____.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section _____.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b).] Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section _____.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the Town Manager by filing a notice of appeal with the Town Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

C. The matter shall be set for hearing no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, the Town Manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. Based upon the submission of such evidence and the review of the Town's files, the Town Manager shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure

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Section 1094.6. If the Town Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the Town Manager on the fourteenth (14th) day.

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

_____.190 No Injunction/Writ of Mandate. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this Town or against any officer of the Town to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

_____.200 Remedies Cumulative. All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

_____.210 Notice of Changes to Ordinance. If a tax under this Chapter is added, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the Town's utility users taxes according to the latest payment records of the Tax Administrator.

_____.220 Penalties. Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor or an infraction at the discretion of the Town Attorney.

_____.230 Future Amendment to Cited Statute. Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time.

_____.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure. The Town shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

_____.250 Operative date. This chapter shall become effective immediately upon adoption by the Town Council as directed by the voters of the Town at the _____ Election of _____, 2009.

Exhibit C Terms and Conditions

The Commission approves the proposed incorporation of the Town of San Martin subject to the following terms and conditions:

Town Boundaries

The boundaries of the Town of San Martin shall be as depicted in Figure 3. Within 14 calendar days of LAFCO adoption of this resolution, the proponents must submit to LAFCO, a map and legal description of the approved incorporation boundary. The legal description must be prepared by a licensed land surveyor to meet the standards of the State Board of Equalization. LAFCO will have the map reviewed by the County Surveyor for compliance with Government Code Section 56375 (l) and LAFCO of Santa Clara's policies.

General Law City

The Town of San Martin shall be incorporated as a general law city.

Name of City

The new city shall be the Town of San Martin

Terms of Office and Election of City Council members

The initial election of council members will be the same date as the vote on incorporation. The Town shall be governed by a five-member Town council elected at large. The terms of the five council members shall be subject to Government Code §57377 and §57378. Of the five elected members of the city council, the three receiving the lowest number of votes shall hold office until the first succeeding general municipal election held in the Town and until their successors are elected and qualified, and the two receiving the highest number of votes shall hold office until the second succeeding general municipal election held in the Town and until their successors are elected and qualified. If two or more members of the city council are elected by the same number of votes, the terms of each shall be determined by lot. The Town council members elected to succeed the members elected at the incorporation election shall hold office for four years from the Tuesday succeeding their election and until their successors are elected and qualified. Pursuant to Government Code §57118, the election shall be held within the entire territory of the proposed incorporation.

Appointment of City Staff

The Town council shall appoint a Town Manager, Town Clerk, Town Attorney and Town Treasurer.

Number of Registered Voters

Pursuant to Government Code §56375(f), the County Registrar of Voters determined that the number of registered voters within the territory proposed for incorporation was 2,824 as of the time of the last report of voter registration by the County elections official to the Secretary of State prior to the date the first signature was affixed to the petition.

Incorporation Fees and Costs

All required fees and costs of processing the incorporation application including the State Board of Equalization Fees, cost of preparing and / or reviewing the map and legal description of the approved incorporation boundary and all costs for staff time and expenses shall be paid by the proponents within 5 calendar days of LAFCO adoption of this resolution.

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Election Costs

The costs of the incorporation election and the election of Town council members shall be borne by the Town if the incorporation is ratified by the voters. If the election is unsuccessful, the election costs will be borne by the County pursuant to Government Code §57150 (b). Election costs shall be paid within 30 days of written request from the Santa Clara County Registrar of Voters, unless alternative payment arrangement is agreed to by the parties.

Effective Date

The effective date of the incorporation shall be July 1, 2009 or soon thereafter as specified in the Certificate of Completion.

Continuation of County Ordinances for 120 days

Pursuant to Government Code §57376, the Town of San Martin shall, immediately following its organization and prior to performing any other official act, adopt an ordinance providing that all County ordinances previously applicable shall remain in full force and effect as Town ordinances for a period of 120 days thereafter, or until the Town Council has enacted ordinances superseding them, whichever shall occur first. Enforcement of continuing county ordinances in the incorporated area shall be with the Town, except insofar as enforcement services are furnished in accordance with Government Code §57384.

Indemnification

Proponent agrees as a condition of approval of this proposal to enter into an indemnification agreement in a form approved by LAFCO Counsel to defend using counsel approved by LAFCO, indemnify, hold harmless, and release LAFCO, its officials, officers, employees, consultants and agents from any claim, action or proceeding brought against them, or any of them, to attack, set aside, void, or annul the approval of this proposal, any term or condition of the approval, or the environmental document which accompanies the approval. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees and expert witness fees that may be asserted by any person or entity, including the proponent, whether or not there is concurrent passive or active negligence on the part of LAFCO, its officials, officers, employees, consultants and agents. Proponents shall execute the indemnification agreement within three calendar days of LAFCO's adoption of the resolution approving the incorporation.

The Town will be bound by and subject to all of the defense, indemnification and hold harmless obligations set forth herein following incorporation.

In any litigation, arbitration or any other proceeding where LAFCO of Santa Clara County seeks to enforce the indemnification provisions set forth above, or seeks a declaration of rights and obligations pursuant to this provision, LAFCO of Santa Clara County shall be awarded reasonable attorney fees, together with any costs and expenses incurred to resolve the dispute and to enforce the provision, if LAFCO of Santa Clara County prevails.

Transfer of County Roads and Highways to the Town

Upon the effective date of incorporation, pursuant to Government Code §57385, all roads and highways or portions of a road or highway in the incorporation territory, which had been accepted into the County road system shall become Town streets.

Waive Detachment from County Lighting Service Area

In accordance with Government Code §56375 (n), waive automatic detachment from County Lighting Service Area based upon the following findings:

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- County Lighting Service Area provides lighting services through assessments to a portion of the incorporation territory
- Detachment would deprive the area's residents of lighting services needed to ensure their health, safety and welfare
- Waiving detachment will not affect the ability of the Town to provide any service

Detachment from the County Library Service Area

Concurrent with the effective date of the incorporation and in accordance with Streets and Highways Code §22613, the territory in the incorporation boundary will be automatically detached from the County Library Service Area. Library services to the Town will continue to be provided by the County Library Joint Powers Authority and funded by the Community Facilities District.

Williamson Act Contracts

Pursuant to Government Code §56889, the Town shall succeed to all Williamson Act Contracts that exist within the boundaries of the Town and the Town shall adopt the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by Sections 51231, 51237 and 51237.5 of the California Government Code. The Town shall not provide services to the Williamson Act Contract properties for land uses or activities not allowed under the contract.

Continuation of Charges

Pursuant to Government Code §56886(t), the Town shall have the authority to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the subject territory by the County or other agency including fees or charges by County Service Areas or Community Facilities Districts.

Base Year Property Tax

The base year property tax transferred to the new Town from the County pursuant to Government Code §56810 shall be \$599,522, determined as follows:

- County Auditor's Ratio (Government Code §56810(c)(1): 57.33%
- Total Net Cost of Services Transferred by the County to the Town, as determined by the Commission (Government Code §56810(c)(2): \$1,045,827
- Calculation of Base Property Tax to be transferred to the Town §56810(c)(3): County Auditor's Ratio X Total Net County Cost = \$599,522

The County Auditor shall adjust the property tax amount to be transferred in accordance with state law and in proportion to the increase in assessed value from Fiscal Year 2006- 2007 to the effective date of incorporation.

Assessed Valuation

The Fiscal year 2006-2007 assessed valuation for property tax calculation purposes within the proposed incorporation boundaries is approximately \$1,021,447,543 and is estimated to be approximately \$1,173,276,629 in Fiscal Year 2009-2010. The CFA assumes a 5.87% annual growth (including inflation) in assessed value for the San Martin area.

Appropriations Limit

Pursuant to Government Code §56812(a), the provisional appropriations limit submitted for voter approval shall be \$3.8 million. The permanent appropriations limit of the Town shall be set at the first municipal election which is held following the first full fiscal year of operation and

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shall not be considered to be a change in the appropriations limit of the Town pursuant to Section 4 of Article XIII B of the California Constitution.

Transition Year Revenues

Pursuant to Government Code §57384, any revenues that are generated in the Town after incorporation, that are retained by the County, shall be applied to the County's cost of service to the area during the transition period, that is, the remainder of the fiscal year following the effective date of incorporation. If the revenue generated exceeds the cost of County provided services, the difference shall be transferred to the Town.

Continuation of County Services

In accordance with Government Code §57384, the County of Santa Clara shall continue to furnish all services provided to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation becomes effective or until the new Town Council requests discontinuance of the services, whichever occurs first. The County shall be reimbursed for these services in accordance with Government Code §57384 (b). A continuation of County services to the Town beyond the first fiscal year, for full cost recovery and/or provision of an enhanced level of service, may be arranged pursuant to an agreement between the two parties.

Revenue Neutrality Mitigation Payments

Total Obligation

The Town shall pay the County a total of \$10,296,398 in revenue neutrality payments based on a 10 year mitigation period. This revenue neutrality obligation is based on the County's annual deficit amount of \$872,000, as calculated in the CFA and includes a 3% inflation rate.

Payment Schedule

A minimum annual revenue neutrality mitigation payment of \$500,771 shall be made by the Town to the County for 25 years following the incorporation. The net present value of payments shall equal \$8,720,000 calculated using a 3% discount rate. Any delinquent payments would accrue interest at the rate of 3% annually. Interest shall continue to accrue on the outstanding prior year's balance until it has been paid in full. The Town may pre-pay any amount due under this obligation on terms mutually agreed upon by the Town and the County.

Town Appropriation

The Town shall appropriate on an annual basis sufficient funds to meet its obligations. The County and the Town, upon incorporation, shall negotiate and execute any additional legal documents necessary to implement the provisions under the "Revenue Neutrality Mitigation payments" and, if required to affect a direct transfer of payments due hereunder. A direct transfer is a transfer from either the State Board of Equalization or the County Auditor-Controller to the County without the necessity of an intermediate transfer to the Town. Until an agreement for direct transfer of such funds is completed, the Town Council shall appropriate on an annual basis, sufficient funds to meet its obligations hereunder.

Morgan Hill Sphere of Influence Amendment

Concurrent with the effective date of the incorporation, the Morgan Hill Sphere of Influence shall be amended to exclude a portion of the proposed incorporation area, as more specifically depicted in Figure 4. The Commission adopts the following Statement of Determinations for the amendment of the sphere of influence of Morgan Hill:

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STATEMENT OF DETERMINATIONS FOR AMENDMENT OF THE SPHERE OF INFLUENCE FOR THE CITY OF MORGAN HILL

1. Present and planned land uses in the area, including agricultural and open-space lands
The area is currently designated Rural Residential and is developed with single family homes. The area does not include agricultural and open-space lands

2. Present and probable need for public facilities and services in the area
The area is unincorporated and located outside Morgan Hill's urban service area. The area receives water service from West San Martin Water Works. The properties rely on septic systems for sewage disposal similar to surrounding properties proposed for inclusion into San Martin boundaries.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

The incorporation proposal does not propose to provide any new services or to change the level of services currently provided to the area. Additionally, there will be no change in service providers providing water or sewer facilities. The Town will contract with the County, other public agencies or private providers for services.

4. Existence of any social or economic communities of interest in the area, if LAFCO determines that they are relevant to the agency.

Even though the area is currently in the SOI of Morgan Hill, the area relates more with San Martin due to its topography, rural character, development patterns and its public access.

Sphere of Influence for the Town of San Martin

The Commission adopts a sphere of influence for the Town of San Martin that is coterminous with the boundary of the Town and adopts the following Statement of Determinations for the establishment of the Sphere of Influence for the Town of San Martin:

STATEMENT OF DETERMINATIONS FOR ESTABLISHMENT OF SPHERE OF INFLUENCE FOR THE TOWN OF SAN MARTIN

1. Present and planned land uses in the area, including agricultural and open-space lands
San Martin's population is estimated in the CFA to be 6,900. The area includes approximately 12 square miles. The proposed Town of San Martin is located between the cities of Morgan Hill and Gilroy along Highway 101. Its proposed boundaries and sphere of influence to the north and south are coterminous with the SOI of Morgan Hill and Gilroy respectively. Its boundaries to the east are along the eastern foothills and to the West the boundaries are along Watsonville Road and include the gated communities of Cordevalle Golf Club/ residential development and Hayes Lane Subdivision. San Martin is a rural residential community, predominantly non-urban and residential in nature. Currently, the County General Plan designates the land uses in the area which include Agriculture Medium Scale, Hillside, Major Public Facilities, Other Public Lands, Ranchlands, Existing Roadside Services, Transportation and Rural Residential.

This incorporation and SOI boundary include much vacant land and agricultural land. The proponents have stated that they intend to maintain the rural residential nature of the area. Additionally, no new services or development is proposed for the new Town as part of the incorporation proposal. It is expected that the County General Plan would be adopted upon incorporation and no change in land use is proposed. Upon incorporation, the Town Council will be required to immediately adopt all current County ordinances for a 120-day period, or until the

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Town Council has enacted ordinances superseding them, whichever occurs first. It is also expected that the Town would initially adopt the County's General Plan.

2. Present and probable need for public facilities and services in the area

The San Martin area has significant groundwater quality issues with high levels of nitrates and perchlorate contamination. The water produced at individual and shared wells frequently does not meet drinking water quality standards. The State Department of Health is not in favor of point-of-use treatment systems and so there is and will continue to be a need for expanded treated water facilities managed by public water agencies.

Sewer services are not provided in the community. Sewage treatment in the area is through individual septic systems. Given the ageing systems in use in San Martin's core area, the changing regulations for wastewater disposal and the groundwater quality issues, it is likely that there will be a need for sewage treatment and disposal systems in the area.

The incorporation proposal does not include any new services or any changes in service levels.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

Water service is provided by the San Martin County Water District and the West San Martin Water Works to certain portions of San Martin. Both providers rely on groundwater extracted from the Llagas sub-basin. This source is contaminated with perchlorate and nitrates and must be treated. It appears that the two providers have adequate treatment (for perchlorate) and storage capacity to serve present needs within their boundaries. Additional capacity may be required to meet the needs for expanded water treatment facilities in the area.

The cities of Morgan Hill and Gilroy, through the South County Regional Wastewater Authority (SCRWA), a JPA, jointly own and share capacity allocations at the wastewater treatment plant and sewer. To address sewer needs in San Martin, the new Town may seek capacity from SCRWA or construct new wastewater facilities. In either case, it will require significant resources for planning and implementation.

4. Existence of any social or economic communities of interest in the area, if LAFCO determines that they are relevant to the agency.

The proposed new Town is bordered on the north and the south by the spheres of influence of Gilroy and Morgan Hill. San Martin is a rural residential community. Although the community and residents interact with the neighboring cities, the community is characterized by a unique rural identity.

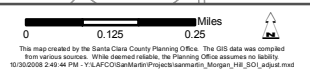
Urban Service Area for the Town of San Martin

The Commission adopts an Urban Service Area for the Town of San Martin that is coterminous with the boundary of the Town


The map displays the Morgan Hill area with the following streets labeled: LA CROSSE DR, LA JOLLA DR, LA MAR DR, CALLE ENRIQUE, VIA CASTANA, ENCINO DR, ROBIE DR, LA ALAMEDA DR, ALAMO DR, WATSONVILLE RD, VENETIAN WAY, EXCALIBUR DR, CLOUD DR, WHITE, NATIVE DANCER DR, WALNUT DR, LEISURE DR, EASY ST, WATER AVE, CALIFORNIA AVE, SANTA TERESA BLVD, PALOMINO LN, COLONY AVE, ROOSEVELT AVE, HARDING AVE, HAYES LN, SAN MARTIN AVE, MHP, RAILROAD AVE, MAPLE AVE, POLLARD AVE, SEYMOUR AVE, LAGAS AVE, MURPHY AVE, and 101.

The map includes a scale bar (0 to 0.25 miles) and a north arrow. The text "MORGAN HILL" is prominently displayed in the upper center. The "Proposed SOI" is indicated by a solid black line, and the "Existing SOI" is indicated by a dashed black line. A callout box points to the "Proposed SOI" area.

This map created by the Santa Clara County Planning Office. The GIS data was compiled from various sources. While deemed reliable, the Planning Office assumes no liability for any errors or omissions. 10/30/2008 2:49:44 PM - Y:\LAPCO\SanMartin\Projects\SanMartin_Morgan_Hill_SOI_adjust.mxd



 Existing SOI for Morgan Hill

 Proposed SOI for Morgan Hill

 Morgan Hill
City Limits



Local Agency Formation Commission of Santa Clara County